

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Donald Hall,  
Petitioner

vs

Case No. 1:02cv488  
(Spiegel, J.; Hogan, M.J.)

Christopher Yanai,  
Respondent

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**ORDER**

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Petitioner is an inmate in state custody at the Oakwood Correctional Facility in Lima, Ohio due to his conviction in 1981 for rape and aggravated burglary after a bench trial before the Hamilton County, Ohio, Court of Common Pleas. With the assistance of counsel from the Ohio Public Defender's Office, he brings this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming as the sole ground for relief that he was denied effective assistance of counsel and the right to appeal his conviction and sentence when his trial attorney failed to assist him, "a mentally handicapped individual," in filing and perfecting an appeal. (Doc. 1, p. 4).

In the return of writ, respondent asserts exhaustion and waiver defenses, but also addresses the merits of petitioner's claim. (*See* Doc. 14, pp. 6-12). Upon initial review of the case, it appears that the petition may be subject to review on the merits. One of the arguments that petitioner has asserted in support of his claim is that "trial counsel never informed [him] of his right to appeal and the benefits and detriments to filing an appeal." (Doc. 24, p. 14). It would be helpful to the Court in addressing this argument to be able to review the transcript of the sentencing hearing where petitioner was allegedly informed of his right to an appeal. It appears, however, that a copy of the sentencing transcript has not been made part of the record as an exhibit to the return of writ.

Therefore, respondent is hereby ORDERED to provide this Court with a copy of the sentencing hearing transcript within twenty (20) days of the date of filing of this Order.

IT IS SO ORDERED.

Date: 07/29/04

s/Timothy S. Hogan  
Timothy S. Hogan  
United States Magistrate Judge